

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**BLUE CROSS BLUE SHIELD OF
MISSISSIPPI, A MUTUAL INSURANCE
COMPANY**

PLAINTIFF

vs.

CIVIL ACTION NO.: 3:13cv655 HTW-LRA

**GOVERNOR PHIL BRYANT, in his
Capacity as Governor of the State of
Mississippi**

DEFENDANT

**SUPPLEMENTAL BRIEF OF BLUE CROSS
REGARDING THE ELEVENTH AMENDMENT**

Pursuant to the Court's October 25, 2013 Text Order, Blue Cross Blue Shield of Mississippi, A Mutual Insurance Company ("Blue Cross") submits the following regarding the applicability of the Eleventh Amendment:

Blue Cross and the Governor agree that the Eleventh Amendment would preclude this Court from entertaining an action brought against the Governor for a violation of state law. *See Earles v. State Bd. of Certified Pub. Accountants*, 139 F.3d 1033, 1039-40 (5th Cir.), *cert. denied*, 525 U.S. 982 (1998); *McLaughlin v. City of Canton*, 947 F. Supp. 954, 964 (S.D. Miss. 1995) (Wingate, J.) ("federal courts are barred by the Eleventh Amendment from enjoining state officers from violating state law"). Blue Cross, however, does not seek to compel the Governor to comply with state law. Instead, Blue Cross seeks to enjoin the Governor from violating its federal rights guaranteed by the United States Constitution. The Eleventh Amendment thus presents no bar to this action. *See Earles*, 139 F.3d at 1039 ("The rule of *Ex parte Young* empowers the federal courts to grant the prospective injunctive relief sought by the plaintiffs if the rules challenged in this case do indeed violate federal law."); *McLaughlin*, 947 F. Supp. at

965 (“[U]nder the *Young* doctrine, the plaintiff here may seek injunctive and, or alternatively, declaratory relief against the state defendants in their official capacities for alleged violations of his rights under the federal constitution and statutes.”).

ACCORDINGLY, the Court should reject the Governor’s argument that the Eleventh Amendment bars Blue Cross’ claims.

Dated: October 25, 2013.

Respectfully submitted,

BLUE CROSS & BLUE SHIELD OF MISSISSIPPI,
A MUTUAL INSURANCE COMPANY

By: /s/ R. David Kaufman
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, R. David Kaufman, certify that I have this day caused the above and foregoing pleading or other document to be served via ECF and notification was provided to all registered users.

Dated: October 25, 2013.

/s/ R. David Kaufman
R. David Kaufman